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FEDERAL MARITIME COMM

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New York – February 10, 2004

Secretary  
Federal Maritime Commission  
800 North Capitol Street N.W.  
Washington, D.C. 20573-0001

Regarding: Comments of **Falcon Express Lines, Inc.**  
Petition No. P2-04

Dear Mr. Van Brakle:

Please find enclosed one original plus fifteen copies of the comments of our client **Falcon Express Lines, Inc.** submitted in response to the request for comments published by the Federal Maritime Commission in regard to each of the above-referenced petitions.

As noted on the certificate of service, two copies of these comments have been served on Petitioner's Counsel, and a copy has been emailed to your office for use in each of the above-referenced petitions.

Sincerely,

SERKO & SIMON LLP

  
Christopher M. Kane

CMK/ps

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**BEFORE THE FEDERAL MARITIME COMMISSION**

IN OF THE SECRETARY  
FEDERAL MARITIME COMM

**COMMENTS OF**

**Falcon Express Lines, Inc.**

**REGARDING PETITIONS OF**

**DANZAS CORPORATION et al**

**and**

**BDP INTERNATIONAL, INC.**

**PETITION NOS. P1-04 and P2-04**

**Christopher M. Kane, Esq.  
Serko & Simon LLP  
1700 Broadway-Suite 3100  
New York, New York 10019**

**Counsel to Falcon Express Lines, Inc.**

**February 10, 2004**

## Comments

**Falcon Express Lines, Inc.**, 159-11 Rockaway Boulevard, Jamaica, New York 11434, which submits these comments, is a licensed Nonvessel Operating Common Carrier Ocean Transportation Intermediary (“NVOCC”).

**Falcon Express Lines, Inc.** was licensed by the Federal Maritime Commission under FMC license no. **007763N**. **Falcon Express Lines, Inc.** began business in 1979.

**Falcon Express Lines, Inc.** wishes to make emphatically clear that it agrees with the exemption of NVOCCs from tariff publication for the transportation of goods moving under Federal Maritime Commission permission to utilize individually structured confidential agreements to meet particular customers’ transportation and logistics requirements.

The Federal Maritime Commission has statutory authority to allow such exemption under section 16 of the Shipping Act of 1984, as amended, and as that Act has no specific prohibition against NVOCCs entering into confidential contracts with their customers, there is no reason such agreements should not be allowed, subject to legitimate Federal Maritime Commission regulation.

As the Petitioners state, the exemption authority in 46 App. U.S.C. 1715 extends to any requirement of the Shipping Act of 1984. This exemption authority would extend to the tariff publication requirements of section 8 of the Act (46 App. U.S.C. 1707).

Further, the Prohibited Acts listed in section 10 of the Act in no way preclude the offering of individually structured confidential agreements to meet particular customers’ transportation and logistics requirements

In fact, it might be argued that the already existing provision for Time-Volume Rates in section S(b) could be further interpreted in a regulation to be issued by the Federal Maritime Commission to allow for confidentiality. While the statutory provision has up until now been interpreted as requiring the publication of the transportation charges incident to such rates in tariff form, the Commission could issue a regulation which might establish confidentiality for the Time-Volume Rate agreement without expanding the coverage of Service Contracts under section 8(c).

In addition to the foregoing, **Falcon Express Lines, Inc.** wishes to express concern over certain aspects of the petitions.

To the extent that petitioners would create a new type of NVOCC Ocean Transportation Intermediary, one which is given preference by the Federal Maritime Commission over all other NVOCCs based on the criteria proposed by the petitioners, we question whether such authority exists absent a statutory change.

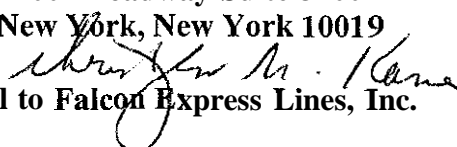
The offering of what was vaguely referred to as a “plethora of value-added services” as a qualification for permission to enjoy the tariff filing exemption and confidential contract

arrangements (Danzas Petition, p.16) would appear too uncertain a criterion. Would the "plethora" of services have to be offered under the confidential contract to qualify for such treatment, or would this be a general criterion? If the NVOCC offered *one less than a "plethora"* of services, would that disqualify the arrangement? Is this criterion indicative of an unauthorized expansion of Federal Maritime Commission jurisdiction beyond what is mandated by law? Note that the Federal Maritime Commission never issued regulations covering Shippers' Associations, even though such entities are referenced in the Shipping Act, because of the sensitivity to the scope of its authority.

As for the financial requirements suggested by the petitioners, there already are financial responsibility requirements imposed on NVOCCs in the form of bonding. Failure to meet those requirements results in revocation of the NVOCC's license and subjects the then-unlicensed entity to penalties provided for in section 13 of the Act.

With respect to the track record of the NVOCC who might enjoy the benefits of the exemption and the permitted confidential contracting, **Falcon Express Lines, Inc.** believes that any NVOCC in good standing should be afforded the privileges. **Falcon Express Lines, Inc.** does not believe that an entity must show that it has been in business since 1966 (BDP Petition, p. 2) or have any particular claim to longevity before qualifying for the privileges. The investment in IT, warehouses or other land or equipment, in some cases may be admirable. But in others, it may be more of an incentive to engage in questionable activity, in order to meet high expenses. Accordingly, the existence of such investment should not be a prerequisite to enjoyment of the privileges sought by the petitioners.

The privileges sought must be extended to any and all NVOCCs in order to ensure that competition will not be reduced, as any NVOCC who cannot enjoy the tariff publication exemption and enter into individually structured confidential agreements to meet particular customers transportation and logistics requirements will be at a severe competitive disadvantage against those who can.

Respectfully submitted,  
**Christopher M. Kane, Esq.**  
**Serko & Simon LLP**  
**1700 Broadway-Suite 3100**  
**New York, New York 10019**  
  
**Counsel to Falcon Express Lines, Inc.**

**February 10, 2004**

**CERTIFICATE OF SERVICE**

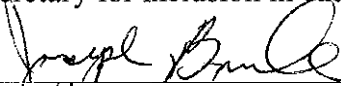
I hereby certify that I have this 10<sup>th</sup> day of February, 2004 served a copy of the foregoing Comments upon counsel to the Petitioner:

Carlos Rodriguez, Esq.  
Rodriguez O'Donnell Ross Fuerst Gonzalez & Williams, P.C.  
1211 Connecticut Avenue, N.W.-Suite 800  
Washington, D.C. 20036

and an original plus fifteen copies upon :

Bryant L. VanBrakle, Esq.  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573

by delivering to same to FedEx (courier). A copy of the Comments has also been emailed to the Secretary for inclusion in each of the two Petition tiles,



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Joseph Bonilla

For: Serko & Simon LLP  
1700 Broadway-31<sup>st</sup> Floor  
New York, New York 10019

**Counsel to Falcon Express Lines, Inc.**